

The claimant commenced working for Heartland USA, the predecessor of the respondent, Big Smith Brands, Inc., in April 1994, as a seamstress, sewing hoods on lightweight cotton fabric coats. In August 1994, after respondent purchased Heartland USA, her job changed to sewing collars on heavy fabric farm coats. Both of these jobs required her to repetitively use both of her upper extremities.

Prior to working for the respondent, in 1989, the claimant suffered carpal tunnel syndrome to her right wrist which required surgical release in September 1990. Subsequently, claimant settled her workers compensation claim concerning her right wrist based on a five percent (5%) disability. Claimant established through her testimony that she experienced some problem with the right wrist while working for Heartland USA, but never sought medical treatment. However, when she began to work with the heavy coats while employed by the respondent, she became symptomatic in both of her arms with the symptoms increasing in her right arm. The claimant notified respondent of her arm problems prior to her last day of work on September 12, 1994.

Claimant sought medical treatment on September 13, 1994, through her family medical provider, Ottawa Family Physicians. She was seen by a physician's assistant who diagnosed tendinitis and took her off of work. Claimant was then referred to Olathe Medical Center for nerve conduction studies that found bilateral median nerve lesions at both wrists (carpal tunnel syndrome).

After receiving the EMG report, claimant's family medical provider instructed her to contact her employer for a referral to an orthopedic physician for further treatment of her bilateral carpal tunnel syndrome condition. The respondent refused to provide the requested medical treatment.

In the instant case, the respondent did not present any evidence to contradict claimant's testimony and medical record exhibits. The only evidence the respondent introduced was a copy of the transcript of the Settlement Hearing held September 4, 1990, concerning claimant's prior right carpal tunnel syndrome claim. The Appeals Board finds that the claimant has presented credible evidence that she has carpal tunnel syndrome of the right wrist and this condition was aggravated while performing her job duties with the respondent which increased her symptoms. Accordingly, the Appeals Board finds, for preliminary hearing purposes, that the claimant should receive appropriate medical benefits for the treatment of her right upper extremity.

The respondent also contends that K.S.A. 44-501(c), which prohibits a claimant from recovering for the aggravation of a pre-existing condition, except to the extent that the work-related injury causes increased disability, applies to this case. Respondent argues that even if the Appeals Board finds that the work claimant performed for the respondent aggravated her carpal tunnel condition of her right wrist, medical benefits should not be ordered because the statute requires proof of increased disability. The Appeals Board agrees that the statute does require a claimant to prove increased disability to be entitled to an award of permanent disability as a result of the aggravation. However, it is the opinion of the Appeals Board that the claimant does not have to prove increased disability in order to obtain medical treatment for an aggravation of a pre-existing condition.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Alvin E. Witwer's Preliminary Hearing Order, dated November 30, 1994, is reversed in part and an Order is entered by the Appeals Board

finding that the claimant did suffer a personal injury by accident to her right upper extremity arising out of and in the course of her employment with respondent. The Appeals Board further remands this case to Administrative Law Judge Alvin E. Witwer for appropriate findings and orders in regard to claimant's request for medical benefits, payment of medical bills and mileage.

IT IS SO ORDERED.

Dated this ____ day of February, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Derek R. Chappell, Ottawa, KS
 Denise Tomasic, Kansas City, KS
 Alvin E. Witwer, Administrative Law Judge
 George Gomez, Director